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AMERICAN JEWISH CONGRESS

Bombings and hate sheets

1958

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Bombings and Hate Sheets

A Program to
Combat Lawlessness

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Bombings and Hate Sheets

A Program to Combat Lawlessness

The attention of the general public and particularly of the Jewish community has been aroused by a recent outbreak of anti-Semitic violence. On October 12, 1958, the building of the Hebrew Benevolent Congregation in Atlanta suffered substantial damage as a result of an explosion of thirty to forty sticks of dynamite. Two days later, Anshai Emeth Temple in Peoria, Ill., suffered some damage from the explosion of a homemade bomb. Earlier this year, Temple Beth El in Miami, Fla., was damaged as a result of a dynamite explosion. Damage from dynamiting was also sustained by the Jewish Community Center of Nashville, Tenn., and the Jewish Center of Jacksonville, Fla. In addition, during the past year, unsuccessful attempts were made to bomb Temple Beth El in Charlotte, N. C., Temple Emanuel in Gastonia, N. C., and Temple Beth El in Birmingham, Ala.

Besides these dynamitings and attempted dynamitings, numerous synagogues throughout the country have received anonymous telephone calls warning of or threatening violence. Many other synagogues have suffered damage from stones thrown through windows and similar acts of malicious mischief.

Accompanying this outbreak of violence has come an apparently substantial increase in anti-Semitic defamation by publications promoting religious hatred. There have been reports that the amount of anti-Semitic litera-

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ture distributed in recent months has increased substantially. Postal authorities corroborate these reports but assert that under existing laws they are powerless to prevent the use of the mails for the distribution of hate literature.

These events have understandably aroused considerable concern within the Jewish community. This concern is not limited to the acts of physical violence but extends as well to the anti-Semitic defamation. In the opinion of many, the hate literature is directly connected with the violence. In any event, even if no cause and effect relationship between them can be scientifically demonstrated, it remains true that widespread, malicious defamation of the Jewish community has caused considerable anxiety among many Jews. This anxiety, at times bordering on fear, has led to increasing demands for vigorous action to cope with these manifestations of anti-Semitism in America, whether it expresses itself in violence or in defamation.

A number of proposals have been offered to cope with the problem of anti-Semitic violence and defamation. It has been suggested that high fences be erected around synagogues, that synagogues be floodlighted at night, that uniformed guards be posted conspicuously around them, that police patrol cars hover continually nearby, that lists of known anti-Semites be supplied to all police departments and be kept in active files at local police stations, etc.

In addition, a number of legislative proposals have been made. It has been suggested that the Congress of the United States enact a statute making it a Federal crime to send through the mails or in interstate commerce

any writings that maliciously defame a racial or religious group. A related proposal is the enactment of a statute to ban from the mails publications that defame racial or religious groups, and to authorize the postal authorities to impound and destroy such publications, without however making it a crime to deposit the publications in the mails. There have also been demands that hate groups and hate literature be the subject of Congressional investigation. The twofold purpose of such an investigation, it is said, would be to compel disclosure of the financial backers of the hate sheets and the issuance of a Congressional denunciation of the hate groups and their publications.

Aimed specifically at the bombings of synagogues have been proposals for the enactment of a Congressional statute making it a Federal crime to bomb or otherwise maliciously damage a house of worship. Another proposal is to make it a Federal offense to transport explosives across state lines with the intent to use them to destroy or damage houses of worship, schools and similar communal buildings. Other measures have been suggested, but these have been the ones that have received most attention.

Nature and Extent of the Problem

An intelligent and effective approach to the problem of anti-Semitic defamation and violence requires a true understanding of both its nature and extent. Defamation and violence aimed against Jews and Jewish property undoubtedly constitute a serious problem and its gravity should not be underestimated. Nevertheless, a disservice is committed by those, within and without the Jewish community, who, for whatever motives exaggerate

the extent of the problem. Anti-Jewish defamation is not a new phenomenon in this country, and while the volume of anti-Semitic publications has undoubtedly increased in recent months, there is no indication that it has reached anywhere near the level of earlier periods. Hatemongering operates in cycles; while the volume today is high, there is no reason to believe it will not again fall to lower levels.

What is true of anti-Semitic defamation is equally true of anti-Semitic violence. Vandalism against synagogues has been a frequent occurrence, and even the use of dynamite or similar explosives is not unprecedented. Here, too, anti-Semitism manifests itself in waves, with outbreaks of violence and vandalism alternating with periods of quiescence.

Whatever may be the motives of those who exaggerate the extent of these anti-Semitic outrages, and whether or not they are acting in good faith, such exaggerations do not contribute toward a sound approach to the solution of the problem. On the contrary, they tend to engender panic and hysteria where dispassionate consideration is essential. Moreover, they are self defeating; for it must be recognized that much if not most of the violence and bigotry can be explained only in terms of mental illness, and exaggerating the extent of anti-Semitic defamation and vandalism is likely to stimulate reactions leading to violence on the part of psychologically-diseased persons.

Even more damaging and more dangerous than an exaggerated view of the extent of anti-Semitic defamation and vandalism, is a distorted perspective of its nature. A completely false picture emerges if defamation

and violence against Jews and Jewish property are detached from the general background out of which they come and are considered as an isolated phenomenon. The Jews are not the sole victims of hate literature and Jewish communal buildings are not the only structures that have been bombed or vandalized. The extent of damage done to public schools and churches during the past year far exceeds that suffered by synagogues, and the number of bombed private homes, owned or occupied almost entirely by Negroes, is greatly in excess of the number of bombed communal buildings. Of the dynamitings that occurred in the South in the past three years, at least two-thirds involved private dwellings.

The anti-Semitic defamation and vandalism must be considered an aspect of the general outbreak of lawlessness in the South since the United States Supreme Court's racial desegregation decisions. The two are interrelated and any effort to meet the problem of anti-Semitism without attacking the underlying lawlessness that gives rise to it will necessarily be futile.

As the current wave of anti-Semitism is but a symptom of the outbreak of lawlessness, so too, the outbreak of lawlessness is but a symptom of the general breakdown of respect for law that pervades the South. *This is the crucial fact: lawlessness is the inevitable consequence of disrespect for law.* This is especially true when the words and deeds of the leaders of the community make disrespect for law an acceptable and indeed commendable standard of social conduct.

This, we believe, is what is happening in the South. When the leaders of the state governments express their defiance of the United

States Constitution, which is the supreme law of the land, they set an example for the entire community. Each section of the community manifests its disrespect for law in the way available to it. The governors and the legislatures do so by enacting statutes aimed at frustrating the constitutional mandate of equality and the decisions of the Supreme Court interpreting that mandate as it applies to the public schools. Local police and law enforcement officials do so by arbitrary arrests and other unlawful interference with the liberties of Negroes, and, perhaps even more important, by failing vigorously to ferret out and prosecute those who commit violence against Negroes and Negro-owned property. Election officials do so by depriving Negroes of their lawful right to vote. And the lowest element of the community expresses its disrespect for law in the only way available to it — dynamiting or otherwise damaging houses of worship, schools and homes. The crux of the problem is that lawlessness on high levels leads inevitably to lawlessness on low levels.

Nature of an Effective Approach

Any approach to the problem of anti-Semitic defamation and violence which does not reach the root of the evil — disrespect for law — will almost certainly prove ineffectual. Indeed, it may well aggravate the gravity of the evil, for it would give rise to the erroneous impression that effective measures are being undertaken to meet the evil and thus may well delay the employment of what are really effective measures. *All proposals that have been suggested must therefore be tested against the criterion of whether they reach the basic disease of disrespect for law or merely the superficial symptoms of defamation and vandalism.*

Furthermore, all approaches to the problem of defamation and violence must be sought within the framework of constitutional limitations. One of the most regrettable consequences of the anxiety bordering on panic that has in some communities accompanied exaggerated accounts of the race hate publications and anti-Semitic vandalism has been the expressed readiness on the part of many well-meaning persons to advocate short cuts with constitutional guarantees in order to apprehend the anti-Semites and suppress their anti-Semitism. It is ironic that in the effort to suppress lawlessness, lawless measures should be urged. We have but one Constitution; the same Bill of Rights that guarantees equality of education and access to the ballot also guarantees freedom of expression and due process of law.

THE REMEDIES WE REJECT

1. Group Libel Legislation

For these reasons we oppose the enactment of legislation, Federal or state, which would make it a penal offense to defame racial or religious groups. Such legislation is not addressed to the evil of disrespect for law, but only the overt manifestation of that disrespect. A statute seeking to prohibit group defamation would at best control the symptoms but would not reach the disease. It would create the impression that effective measures had been adopted to meet the basic problem, whereas the basic problem had been avoided.

There are laws, Federal and state, that impose criminal penalties for incitement to violence. Laws punishing group defamation which is not accompanied by incitement to an unlawful act rest on a different footing. They

seek to punish evil words rather than evil deeds.

In a recent decision, the United States Supreme Court held in effect that the guarantees of freedom of speech and of the press in the Bill of Rights protect even advocacy of the overthrow of the government by force and violence where the advocacy falls short of incitement. This decision was hailed by organizations and individuals concerned with civil liberties as harbinger of a return to the libertarianism of the pre-McCarthy era. A group libel law which makes criminal expression that does not even go so far as advocating unlawful conduct, much less inciting it, certainly infringes upon civil liberties. Here as elsewhere America should remain faithful to Jefferson's dictum that "it is time enough for the rightful purposes of civil government for its officers to interfere when principles break out into overt acts against peace and good order."

2. Postal Censorship

We oppose also the enactment of a law that would authorize or require the postal authorities to exclude from the mails publications libeling racial or religious groups. In some respects such a measure would present an even more serious threat to civil liberties than a law making it a penal offense to send such publications through the mails. In the first place, the measure for a postal ban would effect censorship in advance of publication, a type of censorship which has been deemed particularly offensive in American traditions from a period even antedating our Constitution. Secondly, it would confer upon a non-elected, administrative official almost complete discretion to decide what shall and what shall

not be distributed through the mails, thus giving him as a practical matter a life and death power over all mass media published in the nation. Finally, the publisher or author of a challenged publication would be deprived of the protection of a jury trial, to which even a group libel penal statute entitles him.

What the United States Supreme Court said in striking down an asserted power by the Postmaster General to ban certain publications from the second class mails is equally applicable here:

. . . a requirement that literature or art conform to some norm prescribed by an official smacks of an ideology foreign to our system. . . . To withdraw the second-class rate from this publication today because the contents seemed to one official not good for the public would sanction the withdrawal of the second-class rate tomorrow from another periodical whose social or economic views seem harmful to another official. . . .

About twenty-five years ago, Justice Brandeis condemned in the following words the asserted power by the Postmaster General to ban from second-class mailing privileges publications that violated no constitutional statute:

. . . Congress may not through its postal police power put limitations upon the freedom of the press which if directly attempted would be unconstitutional. "Liberty of circulating is as essential to that freedom as liberty . . . of publishing, indeed, without the circulation, the publication would be of little value." . . . If, under the Constitution, administrative officers may, as a mere incident of the peace time administration of their departments, be vested with power to issue such orders as this, there is little of substance in our Bill of Rights and in every extension of governmental functions lurks a new danger to civil liberty.

Implicit in any proposal to empower the postal officials to bar hate literature from the mails is a distrust in the capacity of the American people to distinguish between truth and falsity and to evaluate the true worth of such literature. The singular lack of success experienced by hate sheets in the United States is evidence, if any be needed, that this distrust in the good sense of the American people is unfounded.

3. Congressional Investigation

Another proposal is the launching of a Congressional investigation of hatemongering. The investigation would be conducted either by a special committee created for that purpose or by an existing committee, either the Senate Sub-Committee on Internal Security or the House Committee on Un-American Activities.

The grave procedural abuses committed by the last two named committees and by the Senate Committee on Government Operations under the chairmanship of Senator McCarthy should require us to consider carefully whether this happily concluded chapter in American history should be reopened. But even if the responsibility for conducting the investigation were to be assigned to a more responsible special or standing committee, there are serious objections to the proposal.

The purpose of the investigation, according to the proponents of the proposal, is twofold: to discredit hatemongering and to expose the financial backers of the hatemongers. We doubt that any useful purpose would be served by a Congressional denunciation of hate groups or hatemongering. The hatemongers have already been vigorously and

frequently denounced in every reputable segment of our society, and an additional denunciation by a Congressional committee or even by a resolution of either or both houses of Congress would have no substantial additional value. Indeed, it might well have the contrary effect of attaching to hate groups an importance which they do not possess and of attracting to them more of the mentally ill-adjusted persons who seem to be the best recruits for hatemongering. In addition, a denunciation of hate groups by Congress may lead many to believe that the underlying problem has been dealt with effectively, though here, too, effort would be expended in treating the symptom rather than the basic cause.

More important, a Congressional investigation of hate groups for the purpose of exposure would raise grave constitutional questions affecting civil liberties.

Only recently the Supreme Court has said in respect to the power of Congress to investigate:

But broad as is this power of inquiry, it is not unlimited. There is no general authority to expose the private affairs of individuals without justification in terms of the function of Congress. . . . Nor is the Congress a law enforcement or trial agency. These are functions of the executive and judicial departments of government. No inquiry is an end in itself; it must be related to, and in furtherance of, a legitimate task of the Congress. Investigations conducted solely for the personal aggrandizement of the investigators or to "punish" those investigated are indefensible.

The proposed Congressional investigation of hate groups would, we believe, fall within the compass of this restriction. It would be an investigation for the sole purpose of exposure.

If, as we have suggested, a Congressional statute banning race hate literature which does not advocate violation of law would be an unconstitutional restriction upon freedom of speech and the press, then the proposal would involve an investigation by Congress in an area where it is constitutionally forbidden to legislate. Its purpose and effect would be simply to "punish" those investigated and therefore would be "indefensible."

Insofar as the purpose of the investigation would be to compel disclosure of the members or financial backers of the hate groups, it would encroach upon another constitutionally protected freedom, namely, freedom of association. But a few months ago, the Supreme Court, in striking down a Southern state court decree compelling the National Association for the Advancement of Colored People to disclose its membership rolls, stated:

It is hardly a novel perception that compelled disclosure of affiliation with groups engaged in advocacy may constitute as effective a restraint on freedom of association as the forms of governmental action in the cases above were thought likely to produce upon the particular constitutional rights there involved. This Court has recognized the vital relationship between freedom to associate and privacy in one's associations. When referring to the varied forms of governmental action which might interfere with freedom of assembly, it said in *American Communications Assn. v. Douds*, *supra*, at 402: "A requirement that adherents of particular religious faiths or political parties wear identifying arm-bands, for example, is obviously of this nature." Compelled disclosure of membership in an organization engaged in advocacy of particular beliefs is of the same order. Inviolability of privacy in group association may in many circumstances be indispensable to preservation of freedom of association, particularly where a group espouses dissident beliefs.

A few years earlier, Justice Douglas, in a case considering the power of Congress to investigate certain groups and compel disclosure of the financial backers of their publications, said:

. . . Once the government can demand of a publisher the names of the purchasers of his publications, the free press as we know it disappears. Then the spectre of a government agent will look over the shoulder of everyone who reads. The purchase of a book or pamphlet today may result in a subpoena tomorrow. Fear of criticism goes with every person into the bookstall. The subtle, imponderable pressures of the orthodox lay hold. Some will fear to read what is unpopular, what the powers-that-be dislike. When the light of publicity may reach any student, any teacher, inquiry will be discouraged. The books and pamphlets that are critical of the administration, that preach an unpopular policy in domestic or foreign affairs, that are in disrepute in the orthodox school of thought will be suspect and subject to investigation. The press and its readers will pay a heavy price in harassment. But that will be minor in comparison with the menace of the shadow which government will cast over literature that does not follow the dominant party line. Fear will take the place of freedom in the libraries, bookstores, and homes of the land. Through the harassment of hearings, investigations, reports, and subpoenas government will hold a club over speech and over the press. Congress could not do this by law. . . .

Like all other freedoms, freedom of association is indivisible. The same law that sanctions compulsory disclosure of membership in hate groups sanctions equally compulsory disclosure of membership in the National Association for the Advancement of Colored People. A Congressional committee that compels disclosure of affiliation with one group engaged in the expression of opinion may compel similar disclosure in respect to all groups engaged in the expression of opinion.

If freedom of association means anything, it means freedom to associate in unpopular and indeed hateful groups.

TOWARD AN EFFECTIVE SOLUTION

1. Federal Responsibility

The various proposals that have been suggested to cope with hate literature all indicate an assumption that the Federal government must share in the responsibility for meeting the problem manifested by the literature and the violence. This assumption we believe to be valid. The breakdown of respect for law must be traced directly to the resistance by many officials in the South to the obligation of securing equality declared in the Supreme Court's decision in the racial segregation cases. This obligation stems from the Fourteenth Amendment of the Federal Constitution. That amendment imposed upon the Federal government ultimate responsibility for securing equality before the law for every American irrespective of race or religion. While the responsibility for upholding law and order within the states rests upon the state governments, the Federal government must share in that responsibility where the breakdown of law results directly in denial of equality to Americans because of their race or religion.

Since this is so obviously the situation in the South today, it is clear that there is both a moral and constitutional obligation on the part of the Federal government to intervene and to employ all its agencies to achieve the goal of equality imposed by the Federal Constitution. The decisions of the Supreme Court and those of the lower Federal courts indicate that the judicial department of the Federal government has recognized its responsibility

and has taken effective means to fulfill it. Unfortunately, neither the executive nor the legislative departments of the Federal government have assumed their share of the responsibilities. Until they do so in practical and effective ways, it is certain that an ultimate solution of the problem of breakdown of law in the South will not be achieved. It follows, therefore, that *any approach to an effective solution must involve corrective action on the part of both the Congress of the United States and the executive branch of the Federal government.* It is on this basis that we propose the following program for Federal action to meet the problem of breakdown of law and of the disrespect for law that pervades the South.

2. Federal Legislation Aimed at Dynamiting

There have been a number of proposals seeking to involve the Federal government in the detection and punishment of persons responsible for the recent bombings in the South. We agree that the detection and punishment of the persons responsible would be an important step towards restoring respect for law. We agree also that involvement of the Federal Bureau of Investigation and the other instrumentalities of the Department of Justice is likely to contribute substantially towards detection and punishment of the perpetrators.

On the other hand, it is important that such legislation should not itself exceed constitutional limitations. It is also important that it should not disregard the basic evil and concern itself only with the excrescence.

For this reason we believe ill-advised the

proposal that Congress enact a law making it a Federal offense to bomb a house of worship. In the first place, it is probable that this measure would violate the constitutional provisions which imposes primary responsibility for law enforcement on the states. The fact that the victim of an unlawful dynamiting is a house of worship does not, it seems to us, constitute ground for invoking the powers of the Federal government. In the second place, and equally important, the proposal disregards the basic problem and treats simply one comparatively minor aspect of it. The number of houses of worship bombings in the South is a relatively small one as compared to the scores of bombings of residences and business places owned by Negroes. Any legislation seeking to impose Federal penalties upon vandals and unlawful users of dynamite must, if it is to have any significance, include in its compass those who use dynamite against private dwellings and places of business.

For the same reason, we do not favor a bill which would make it a Federal offense to transport explosives across state lines with the intent to use them against communal buildings, such as churches and schools. While there is ample precedent for such a measure in that the transportation of explosives across state lines constitutes ground for Federal intervention, the exclusion of private homes and places of business from the proposal makes it defective and inadequate.

We do, however, favor and urge *enactment of a measure that would make it a Federal offense to transport explosives in interstate commerce with the intent to use them unlawfully against communal buildings and private residences and places of business*. While this measure, if enacted, cannot be counted upon

completely to meet the problems of lawlessness in the South, it would represent one effective, if modest, step in meeting that problem.

3. Enforcement of Existing Laws Against Violence

The quest for new Federal laws aimed at violence and vandalism should not obscure the fact that there are today laws on the statute books making it a Federal penal offense to conspire to deprive persons of rights secured by the Constitution, including the right to attend non-segregated public schools. While these laws may well be inadequate and, as recommended by the President's Committee on Civil Rights some ten years ago, require revision, expansion and modernization, nevertheless they do offer substantial basis for Federal intervention. We suggest that the Department of Justice has not fully utilized existing laws that can and in the past have been used to detect and punish persons committing violence against the lives and properties of Negroes. We urge therefore that without waiting for the enactment of additional laws the Department of Justice and the Federal Bureau of Investigation *undertake a concentrated effort to determine to what extent the recent bombings in the South violate existing Federal laws* and apprehend the guilty and bring them to justice.

4. Protecting the Voting Rights of Negroes

At its last session, Congress enacted a law whose purpose it was to accord greater Federal security to the rights of Negroes to participate in elections and primaries in the South. Notwithstanding this new statute, the reports

of denial of suffrage to Negroes in many sections of the South are widespread. Aside from the denial of the constitutional rights of American citizens, this deprivation of Negroes' voting rights is a substantial contributing cause to the general breakdown of respect for law in the South. If voting officials frequently disregard the provisions of the Federal Constitution and Federal laws insuring the Negro's right to vote, it is inevitable that others would disregard state laws securing the safety of the lives and property of minority groups. There is no way of isolating disrespect for law; disrespect for some laws cannot but lead to disrespect for others and indeed for all law.

We therefore urge that the Department of Justice *undertake a full-scale investigation of the denial of voting rights in the South* and utilize the powers granted by the recently enacted statute to correct the situation. We urge further that the Commission on Civil Rights intensify its investigation of the denial of voting rights and promptly bring to the attention of the Department of Justice all evidence of such denials.

5. Securing Equality in Education

It is our belief that the major cause of the breakdown of respect for law in the South has been the successful defiance in the South of the mandate of equality in education imposed by the 14th Amendment and reiterated by the Supreme Court in the racial segregation cases. This is undoubtedly the single instance of the most widespread defiance of law by the class of society enjoying the highest status and esteem. Until Southern governors, legislators, courts and other public officials

accept the mandate of equality and in good faith begin effectuating the decision of the Supreme Court, there can be no hope for restoration of respect for law and the elimination of racial and religious violence and vandalism.

In this area both the executive and legislative branches of the Federal government have been wanting in fulfilling their obligations. The President of the United States, to whom the entire nation looks for moral leadership, for a long time remained silent on the basic underlying moral principle of equality. Indeed, when the President finally spoke, he was equivocal with regard to the application of that principle to racial segregation in the schools.

Congress too has failed in its obligations in this aspect of the 14th Amendment. During its last session it refused to enact a statute which would have imposed upon the Federal government affirmative responsibilities in peaceful implementation of the Supreme Court's decision requiring racial integration in the public schools. This abdication of responsibility on the part of both the President and the Congress more than anything else contributed to silencing the voices of enlightened conscience in the South and constituted implicit yet potent encouragement to those elements of the community seeking to defy the Constitution and Federal laws and to frustrate the decision of the Supreme Court.

We therefore urge *enactment by Congress of a statute requiring all departments of the Federal government to share in the responsibility for the effective implementation of the Supreme Court's decision on racial integration.* In this respect, particular responsibility

should be assigned to the Department of Justice and the Department of Health, Welfare and Education. The Department of Justice should be required to bring such legal action and proceedings as may be necessary to insure compliance with the decision. The Department of Health, Welfare and Education should be directed to lend the skills and experience of its officials to aid local school districts in the development and carrying out of plans for integration.

6. Awakening the Conscience of the People

While the measures we recommend should go a long way towards restoring respect for law in the South and thus bring an end to the wave of bombings and vandalism, the ultimate solution lies in the reawakened conscience of the South. We are convinced that the overwhelming majority of the people in the South are law-abiding, peaceful citizens who abhor lawlessness and violence, and would, if furnished leadership, demand a return to law. What is needed is action on the part of the moral leaders of the nation to reawaken the conscience of the South and to give encouragement to those voices that have been stilled.

Towards this end we urge *that the President of the United States summon a conference of leaders of the nation in the fields of religion, business, labor, finance, education and government to dramatize the breakdown of respect for law in the South, to awaken the conscience of the South, and to remind all that respect for law is a responsibility of all persons regardless of race, religion, color or geographical location.*

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